
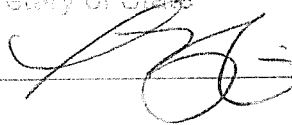


A.G. Contract No.: KR04-0324TRN  
ADOT ECS File No.: JPA 04-023  
Project No.: STP-TUC-0(058)A  
Project: Mountain Avenue  
Section: Roger Road ~ Ft. Lowell Road  
TRACS No.: SS535 01C  
Budget Source Item No.: N/A

NO. 289116  
Filed with the Secretary of State  
Date Filed: 5/16/07  
  
Secretary of State  
By: 

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF TUCSON

**THIS AGREEMENT** is entered into May 17th 2007, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF TUCSON, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The City has submitted to the Federal Highway Administration (FHWA) the request for approval of federal funds and wishes to **advance the construction** from Roger Road to Fort Lowell Road on Mountain Avenue, to add bicycle lanes, sidewalks, curb and gutter, landscaping and rubberized asphalt concrete, herein referred to as the "Project". Such federal funds, estimated at \$16,433,000.00, are identified in the Pima Association of Governments (PAG), Transportation Improvement Program (TIP) and the State Transportation Improvement Program (STIP) as ID# 26.01 for Federal Fiscal Year (FFY) 2007-2011.

4. The City and PAG have selected the Project, within the boundary of the City. The City has met the FHWA certification requirements to construct and administer the Project and will take full responsibility of all Projects costs until such time of federal reimbursement from the PAG 2007-2011 TIP Projects. Advancement of funds begins in FFY 2007 through 2011, should federal funds not be available, the City agrees to be responsible for the total cost of the Project.

5. The interest of the State for this Project is in the acquisition of federal funds for the use and benefit of the City and the State is the designated agent for the City. Funds expended for the Project, are authorized by reason of federal law and regulations. The Categorical Exclusion was approved on November 22, 2005, by the ADOT Local Government Section, which determined that this project meets the criteria of Group two, non-Programmatic Categorical Exclusion in accordance with 23 CFR 771.117(d), and the Arizona Programmatic Categorical Exclusion.

6. Upon execution of this Agreement, the State will submit the Project to the FHWA for authorization to advance reconstruction of the Project. It is understood and agreed to by the parties herein; authorization of this Project does not constitute a commitment, guarantee or obligation on the part of the State.

7. The City requests authorization to proceed with construction of the Project, scheduled to advertise for bid in FFY 2007 and will be responsible for all construction costs associated with the Project and the State will reimburse the City in FFY 2008 (\$600,000.00), FFY 2009 (\$7,500,000.00), FFY 2010 (\$2,500,000.00) and FFY 2011 (\$5,833,000.00) totaling an amount of (\$16,433,000.00) respectively.

8. The work encompassed in this Agreement is to be administered by the City, and the estimated Project costs are as follows:

**Project TRACS No.: SS535 01C**

Estimated Federal Aid Funds @ 94.3% (Cap)	\$16,433,000.00
Estimated City Funds @ 5.7% (Cap)	\$ 993,300.00
<b>Total Estimated City Advance Funds</b>	<b>\$17,426,300.00</b>

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The City shall:

a. Upon execution of this Agreement and prior to advertisement of the Project's construction contract, set aside funds in the amount of \$17,426,300.00 for the estimated total cost of the Project work provided for in this Agreement, including the amount of federal aid to be reimbursed in FFY 2007-2011.

b. Provide any required preliminary engineering and planning studies, the environmental analysis and design of the Project.

c. Be responsible for sharing the cost of construction work covered by this Agreement with FHWA, each in the proportion prescribed and determined by FHWA.

d. Provide to the State appropriate documentation of the actual costs expended by the City for the Project work as the construction work proceeds. Submit invoices to the State for reimbursement of federal aid funds at 94.3% capped, based on the actual costs associated with the Project paid by the City.

e. Provide the State with documentation from the PAG at the time of authorization/obligation, committing to the conversion of federal funds, in the amount shown in the current TIP. If PAG should advance the conversion year of federal funds, and a formal approval through the Regional Council and a TIP/STIP amendment is approved, then the City will request the PAG send a letter to the State requesting conversion of funds be advanced.

2. The State shall:

a. Upon execution of this Agreement and authorization of funds commence reimbursement to the City the obligated federal aids funds as programmed in the 2007-2011 TIP Projects, the total estimated amount of federal aid is \$16,433,300.00. However, the aforementioned reimbursement amount is subject to funds availability.

b. No more than monthly, and upon receipt and approval of an invoice, reimburse the City the federal aid funds for construction work addressed under this Agreement at 94.3% (capped) of the total project costs.

c. As required by the FHWA, provide design review of the Project plans, studies and related documents, and when appropriate provide comments, which will be incorporated into the construction documents.

d. On behalf of the City, perform certain work and prepare certain documents required by the FHWA to qualify certain projects for and to receive federal aid funds. Such work may consist of, but is not specifically limited to, the review and approval of the City prepared environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement. (when specifically authorized by, for and on behalf of the City, and at no cost to the State).

e. Not be obligated to incur any expenditure in the project, should some unforeseen conditions or circumstances increase the cost of said work required, by a change in the extent or scope of the work called for in this Agreement,

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The City shall require its contractors to name the State and Arizona Department of Transportation (ADOT) as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This Agreement shall remain in force and effect until completion of the work and related deposits or reimbursements.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

City of Tucson  
ATTN: Department of Transportation -  
Engineering Division  
P.O. Box 27210  
Tucson, AZ 85726-7210

10. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY OF TUCSON**

**STATE OF ARIZONA**

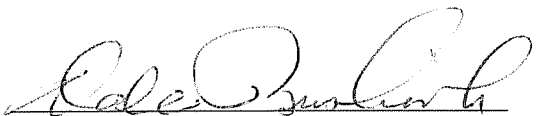
Department of Transportation

By



ROBERT E. WALKUP April 10, 2007  
Mayor

By



DALE BUSKIRK, DIVISION DIRECTOR  
Transportation Planning Division

**ATTEST**

By



KATHLEEN DETRICK April 10, 2007  
City Clerk

G: 04-023-City of Tucson  
Mountain Ave Roger Rd - Ft. Lowell Rd  
Local Gov SS535 01C  
February 7, 2007-ly  
Approved February 15, 2007-ly

ADOPTED BY THE  
MAYOR AND COUNCIL

April 10, 2007

RESOLUTION NO. 20633

RELATING TO INTERGOVERNMENTAL AGREEMENTS; APPROVING AND AUTHORIZING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUCSON AND THE STATE OF ARIZONA FOR FEDERAL FUNDS FOR CONSTRUCTION OF MOUNTAIN AVENUE BETWEEN ROGER ROAD AND FT. LOWELL ROAD AND THE LOAN REPAYMENT AGREEMENT WITH THE STATE OF ARIZONA TRANSPORTATION BOARD FOR REPAYMENT OF THE HIGHWAY EXPANSION AND EXTENSION LOAN PROGRAM (HELP) LOAN NO. QTUC4P07U; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Intergovernmental Agreement between the City of Tucson and the State of Arizona for federal funds for construction of Mountain Avenue between Roger Road and Ft. Lowell Road, attached hereto as Exhibit A, is approved.

SECTION 2. The Loan Repayment Agreement between the City of Tucson and the State of Arizona Transportation Board for repayment of HELP Loan No. QTUC4P07U, attached hereto as Exhibit B, is approved.

SECTION 3. The Mayor is hereby authorized and directed to execute said Agreements for and on behalf of the City of Tucson and the City Clerk is directed to attest the same.

SECTION 4. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 5. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately

ATTORNEY APPROVAL FORM

FOR THE CITY OF TUCSON


INTERGOVERNMENTAL AGREEMENT DETERMINATION

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF TUCSON, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned CITY Attorney who has determined that it is in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated March 21, 2007

  
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Attorney

<p>TERRY GODDARD Attorney General</p>	 <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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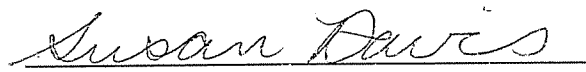
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0324TRN (**JPA 04-023**), an Agreement between public agencies, i.e., The State of Arizona and The City of Tucson, has been reviewed pursuant to A.R.S. § 11-954, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: May 11, 2007.

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:smb:940464  
Attachment